IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

CMA.No. 84 of 1999()

AGAINST THE ORDER DATED IN IA 1958/88 IN OS.85/1971 of PRL.SUB COURT, TRIVANDRUM DATED 22ND JUNE 1998

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APPELLANT/PETITIONER/ 34TH DEFENDANT

SUHRA BEEVI
WIFE OF ANSARI
T.C. 28/5
CHIRAKULAM ROAD, THIRUVANANTHAPURAM

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENTS/COUNTER- PETITIONERS/PLAINTIFFS

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1. AYISHA UMMAL AWA UMMAL
VILAYIL VEEDU
EDAVA DESOM AND VILLAGE

2. SALMA UMMAL HAJIRA UMMAL
KUZHIVILA VEEDU OF
EDAVA DESOM AND VILLAGE

3. HAJIRA UMMAL SARA UMMAL
NAZEE MANZIL OF
EDAVA DESOM AND VILLAGE

4. AHAMMED KUNJU NAZIMUDEEN
NAZEE MANZIL OF
EDAVA DESOM AND VILLAGE

5. SARA UMMAL NAZEEMA
NAZEE MANZIL OF
EDAVA DESOM AND VILLAGE

6. SARA UMMAL RAHEEMA
NAZEE MANZIL OF
EDAVA DESOM AND VILLAGE

7. SARA UMMAL SUIRA
NAZEE MANZIL OF
EDAVA DESOM AND VILLAGE

8. MOHAMMED KUNJU NAZIL OF
NAZEE MANZIL OF
EDAVA DESOM AND VILLAGE

9. SARA UMMAL SUJEERA OF
NAZEE MANZIL OF
EDAVA DESOM AND VILLAGE

10. HAJI UMMAL SUHARA BEEVI
KUZHIVILA VEEDU OF
EDAVA DESOM AND VILLAGE

11. MUHAMMED ABDUL KHADAR
SUHARSHAM OF
EDAVA DESOM AND VILLAGE

12. HAJIRA UMMAL PATHIMA BEEVI
SUHARSHAM OF
EDAVA DESOM AND VILLAGE

13. ABDULKHALAM ASHADU OF
SUHARSHAM OF
EDAVA DESOM AND VILLAGE

(ADDL. RESPONDENTS 14 TO 16)

***14. NIZAMUDEEN, S/O SALMA UMMAL HAJIRA UMMAL**
KUZHIVILA VEEDU OF EDAVA DESOM AND VILLAGE

***15 NAZIRUDEEN S/O SALMA UMMAL HAJIRA UMMAL**
KUZHIVILA VEEDU OF EDAVA DESOM AND VILLAGE

***16.BABY SAJIDA D/O SALMA UMMAL HAJIRA UMMAL**
KUZHIVILA VEEDU OF EDAVA DESOM AND VILLAGE

(ADDL. RESPONDENTS 14 TO 16 ARE IMPLEADED AS THE LEGAL HEIRS OF THE DECEASED SECOND RESPONDENT VIDE ORDER DATED 04-01-2005 ON I.A. 230/2004)

BY ADV. SRI.K.S.SREEKUMAR
SRI.K.S.SREEKUMAR
SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)

THIS CIVIL MISC. APPEAL HAVING BEEN FINALLY HEARD ON 18-06-2007 THE COURT ON 18/06/2007 DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR . J.

C.M.A No. 84 of 1999

Dated this the 18th day of June 2007

JUDGMENT

The 34th defendant in OS. 85/1971 is the appellant. The appeal is filed challenging the order passed by the court below dismissing an application filed by the petitioner for direction to the receiver to hand over possession of 59 cents of land comprised in Survey No. 863 of Edava Village, Chirayinkil Taluk. The case of the petitioner was that the said property of 59 cents by name "Vankadavila Purayidom" in survey No. 863 of Edava village, Chirayinkil Taluk as part of C schedule item in the suit. It was contended that the parties to the suit entered into a compromise by which the C schedule properties are allotted to the legal heirs of the 1st defendant. It was averred that a receiver was appointed in respect of the properties involved in the suit and he took possession of those lands including 5 cents of land comprised in Sy.No.863 of Edava Village. It was alleged that in spite of compromise entered into between parties, the receiver did not hand over possession of the above said property and hence a direction may be issued to him to hand over possession of the property to the appellant.

2. The receiver filed objection stating that the properties allotted to the legal heirs of the 1st defendant took back the possession of those properties by executing a 'Kaichit'. It was contended by him that he had not taken possession of 59 cents of property in Survey No. 863 of Edava Village and as such he was not in a position to surrender possession of

the above said property. The court below accepted the statement of the receiver and dismissed the application. Challenging that order this appeal is filed.

3. The only point arising for consideration is whether the direction as sought for can be issued. The learned counsel appearing for the contesting respondents has argued before me that the petition was filed with a mischievous object and the 59 cents comprised in Survey No. 863 of Edava Village is in the possession of the contesting respondents and the receiver had not taken possession of property .

4. The petitioner sought a direction against the receiver. The receiver was never made a party to the appeal filed before this Court or in the petition filed before the Court below. No notice was issued to the receiver from this Court. So no effective relief can be granted to the appellant. Further the court below had held that the appellant had not successful in establishing that the receiver had actually taken possession of the disputed land. He did not produced any documents to show that receiver was in actual possession of the same. Without the receiver on the party array no decision can be taken in this appeal and hence this appeal is only to be dismissed But I make it clear that the dismissal of this appeal will not be a bar for the appellant to take recourse any other remedies available to her in accordance with law.

In the result the appeal is dismissed.

sd/-

K.PADMANABHAN NAIR,JUDGE

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